IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 192 of 1999
in
SPECIAL CIVIL APPLICATION No 6954 of 1998

WITH
CIVIL APPLICATION No.1552 of 1999
in
LETTERS PATENT APPEAL No.192 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
GUJARAT MADOOR SABHA

Appearance:
1. LETTERS PATENT APPEAL No. 192 of 1999
MR.V.M. PANCHOLI, ASSISTANT GOVERNMENT PLEADER for the appellant.
MR.RAJESH MANKAD FOR MR SUBRAMANIAM IYER for the respondent
RULE NOT RECD BACK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/04/2005

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE R.S.GARG)

The appellant-State being aggrieved by order dated 07.12.1998 passed in Special Civil Application No.6954 of 1998 whereunder the award dated 27.04.1998 passed by the learned Labour Court, Ahmedabad in Reference (LCAD) No.116 of 1989 was confirmed, is before this Court.

2. The respondent workmen approached the Labour Court with a submission that they were working for more than 16 years, neither they were confirmed nor they were paid their dues in accordance with law, therefore, the reference be answered in their favour, a direction be issued for their confirmation, benefits in accordance with law be awarded and payment of salary in accordance with law be granted. The appellant-Government raised the issue of jurisdiction of the Labour Court, inter alia, that the employee could not invoke jurisdiction of the Labour Court as the school was not/ is not an industry within the meaning of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). After hearing the learned counsel for the parties, the learned Labour Court allowed the reference in favour of the workmen and issued directions that with effect from 01.01.1989 they would be deemed to be permanent Class IV employees and they would be entitled to salary of the said post and would also be entitled to other benefits including the allowances. The appellant-State in the Special Civil Application did not raise other questions but confined their attack to the award made by the Labour Court only on one question that the school is not an industry. The learned Single Judge relying upon the judgement of the Supreme Court in the matter of Miss A. Sundarambal Vs. Government of Goa, Daman & Diu, reported in A.I.R. 1988 SC 1700 observed that the controversy raised before him was settled by the said decision.

3. The learned counsel for the appellant-State submits that unless evidence is brought on record to show that how a particular Department of the Government would be an industry, just at drop of the hat or for the sake

of argument every Department of the Government cannot be held to be an industry. On the other hand learned counsel for the respondent submitted that the judgement in the matter of Miss A. Sundarambal (supra) would virtually clinch the issue and the judgement on which reliance is being placed by the counsel for the State is not applicable to the facts of the present case.

4. In the matter of State of Gujarat & others Vs. Pratamsingh Narsinh Parmar, reported in Judgements Today 2001 (3) SC 326 the Supreme Court observed that if a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". The Supreme Court further observed that ordinarily, a department of the Government cannot be held to be an industry and rather it is a part of the sovereign function.

5. In the said matter the Supreme Court further observed that there had been no iota of assertion to that effect, no doubt, it was contended that the order of dismissal was vitiated for non compliance of section 25F of the Act. In our considered opinion the said judgement would be an authority to lay down the proposition that just on the say of somebody the Labour Court or the High Court cannot hold or observe that every Department of the Government is an industry. The said judgement beyond that does not say anything. It simply says that whenever a dispute arises that whether the establishment or the department or a unit of the department of the Government is an industry or not then such evidence will have to be brought on record and after hearing the parties the concerned Labour Court will have to record a finding of fact that such establishment/ department or unit of the said department is an industry or not.

6. In the matter of Miss A. Sundarambal (supra) the Supreme Court was seized of the dispute relating to a school and a teacher where a question arose whether school is an industry or not and whether a teacher is a workman or not. The Supreme Court observed that though school is an industry within the sweep of the Act but a teacher employed for imparting education would not be a workman. From this judgement of the Supreme Court it would be clear that a teacher claiming himself to be a workman cannot go to the Labour Court, nor he would be allowed to raise a dispute under the Act, but it would also be clear from this judgement that a school would be

an industry for all practical purposes.

7. If the Supreme Court has already held that a school is an industry, then it is not expected of an employee that he would lead evidence, nor it would be expected from the Labour Court that it would enter into unnecessary exercise of recording a finding after marshalling evidence and appreciating pleadings that a school is an industry. Once the Supreme Court says that a particular establishment, institution, department or unit of the department is an industry, then the said finding would be binding for all practical purposes and no court in the country would be entitled to hold that a school would not be an industry.

8. If we hold that a school is an industry, then the judgement is inescapable. If we hold that school is an industry and the appellant admits that the members of the respondent-Sabha are the employees, then the provisions of the Act would be applicable and the Labour Court would have complete jurisdiction in the matter.

9. It was next submitted that the matter should have been referred to the Education Tribunal but during the course of the argument it was conceded that the matters of teachers only can be referred to the Education Tribunal and as the members of the respondent-Sabha are not imparting education nor are falling within the class of 'teachers' their matters could not be referred to the Education Tribunal.

10. The learned Single Judge in our considered opinion was not unjustified in placing strong reliance upon the judgement of Miss A. Sundarambal (supra) to observe that school is an industry.

11. In our considered opinion the learned Labour Court, so also the learned Single Judge were absolutely justified in holding that the school is an industry and the present respondent being employees were entitled to an order in their favour.

12. We find no reason to interfere. The Appeal is dismissed.

13. It is expected of the State Government that instead of delaying the matter unnecessarily they will observe directions issued by the Labour Court at their earliest.

14. In view of dismissal of the Letters Patent

Appeal, no orders on Civil Application No.1552 of 1999 are called for. The Civil Application is disposed of accordingly. Interim relief granted earlier is vacated. Notice is discharged.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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